IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.15 OF 2000.

The State of Maharashtra : Appellant.

versus

Sajan Motiram Ahire : Respondent.

Mr.S.N.Gawade, AGP, for the State/Appellant.

None for the Respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 9th February 2005.

ORAL ORDER

1. Heard learned AGP for the State/Appellant. Respondent is served. Nobody is present for him. By this appeal the State has challenged the impugned judgment of the Joint District Judge of Nashik dated 14th February 1997 by which he enhanced the compensation from Rs.9,500/- to Rs.30,000/- Per Hectare (P.H.) The land from Gat No.138, admeasuring 0.44 R. and 0.16 potkharaba (P.K.) situated at village Deolane Tal. Baglan, Dist. Nashik. was

acquired. The notification under Section 4 of the Land Acquisition Act was published on 20th March 1986. the Special Land Acquisition Officer awarded Rs.9,500/- P.H. for Jirayat land and Rs.200/- for P.K. Therefore, the claimant filed a Reference vide L.A.R. 551 of 1990 before the lower Court, and the Lower Court enhanced the compensation to Rs.30,000/- P.H.

2. The learned AGP for the State contended that even though the Court was justified in relying upon the earlier judgment in a Group of L.A.Rs. vide Land Acquisition Reference No.248 of 1987 & ors. from the adjoining villages, there was no justification to award compensation at Rs.30,000/- P.H. He contended that in the earlier Reference the Court has taken price of the land to be Rs.13,784/. The sale deed on 19.4.1977. The Notification in that case was published on 27.12.1979. There was difference of four years seven months and fifteen days and, therefore, the Court awarded 10% rise per annum and ultimately price came to be fixed to Rs.21,434/- per hectare, approximately Rs.22,000/-.

3. The learned AGP contended that even if the Court was justified in relying upon the judgment in L.A.R. No.248 of 1987, as per Exhibit 20, there was no justification and no reasoning given to award compensation at Rs.30,000/- P.H. He took me through the entire judgment. But there is nothing which would support the rate of compensation awarded. Even the Court has rejected the claim of the claimant that it was Bagayat land, the date of Notification under Section is 20th March 1986. The learned APP pointed out that in para 4 of the impugned judgment the court has clearly observed that in previous Award, [i.e. the Award in the group of references referred to above, given by the same judge i.e. Shri B.M.Bhoga), the Court found that in the earlier Award Rs.22,000/- P.H. was the price for Bagayat land. He rejected the contention of the claim in this case that Rs.22,000/- P.H. was granted in respect of Jirayat land. If that is so, i.e. if Rs.22,000/-, in the group of references, per hectare was awarded in respect of Bagayat land, then there was no justification in fixing the amount of Jirayat land in the present case at Rs.30,000/- P.H. Firstly, there is no convincing

evidence that there were two wells in the land of the claimant and even if it is stated that there is one well, there is no evidence that the crops were grown by irrigation from the said well.

4. The learned AGP pointed out that what the Court has done is, it has taken Rs.22,000/- P.H. as the basic price and given 10% escalation and has arrived at a figure of Rs.22,000/- P.H. This according to him was totally wrong.

5. I find substance in the submissions made by the learned AGP. There was nothing wrong in placing the reliance upon the earlier Reference. But Rs.22,000/- P.H. was the price for Bagayat land then in the absence of any evidence from the claimant that the land acquired in the present case was of Bagayat land, the rate of Rs.22,000/- P.H. should not have been accepted as basic rate and then by adding 10% P.H. claim should not have been enhanced or fixed at Rs.30,000/- P.H. The court has again come to the conclusion that the quality of the land in the earlier case i.e. in the Group of References, and the present case was different. If that is so, then there was no justification in enhancing the compensation to

Rs.30,000/- P.H. The S.L.A.O. has awarded Rs.9,500/- P.H. for the Jirayat land in this case and Rs.200/- for potkharaba.

6. Therefore, if the earlier Award in the Group of References, referred to above, could not help the claimant in arriving at the compensation, then the Court will have to fix the compensation with reference to the compensation awarded for Bagayat land. In the earlier cases, Rs.22,000/- was the price for Bagayat land, then in my opinion, Rs.15,000/- P.H. would be proper price for Jirayat land.

. Compensation of Rs.2000/- for Potkharaba awarded by the lower Court is not required to be interfered with. Therefore, the appeal is required to be allowed partly. Hence the order.

:ORDER:

Appeal is partly allowed.

The claimant will be entitled to receive compensation at the rate of Rs.15,000/- Per Hectare for the Jirayat Land and

Rs.2,000/- for Potkharaba land with interest at the rate granted by the lower Court.

During pendency of the appeal the State has deposited the amount and whatever amount from the said deposit the claimant has withdrawn, the claimant will be entitled to retain only that much amount to which he is entitled as per this order and remaining amount will have to be returned to the Government within six weeks from today. If not returned within six weeks, the claimant will be liable to pay interest at the rate of 12% or at the interest rate awarded to him by the trial Court, whichever is lower to the Government from the date of withdrawal till payment.

[D.G.DESHPANDE]

09/02/2005 JUDGE.